IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1810 of 2006
to
SPECIAL CIVIL APPLICATION No. 1814 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

PATEL SHANTABEN MADHABHAI CHATURBHAI & 4 - Petitioner(s)

Versus

STATE OF GUJARAT THR'PRINCIAL SECRETARY & 1 - Respondent(s)

==========

Appearance :
MR AMIT C NANAVATI for Petitioner(s) : 1 - 5.
MR SP HASURKAR A.G.P. for Respondent(s) : 1,
None for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
and
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 13/02/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA)

1. Rule. Mr. S.P. Hasurkar learned A.G.P., waives service of rule on

behalf of the respondents. At the request of the learned advocates for the respective parties, the matter is taken up for final hearing today itself.

2. The sole grievance made by the petitioners in these petitions is that their applications made under Section 28A of the Land Acquisition Act [hereinafter referred to as "the Act"] have been rejected on the ground that along with the applications, certified copy of the award of the Reference Court is not produced. The petitioners have, therefore, challenged the order passed by respondent no. 2 dated 21st December, 2005, copy whereof, is annexed as annexure-D to the petition.

2.1. It is the say of the petitioners that they owned lands bearing Survey No.9/2, admeasuring 1119 Sq.mtr, Survey No.10, admeasuring 817 Sq.mtr., Survey No.11, admeasuring 304 Sq.mtr. Survey No.11/3, admeasuring 1714 Sq.mtr., Survey No.14, admeasuring 2854 Sq.mtr., and Survey No.16/1, admeasuring 1189 Sq.mtr., at village Chhamichha, Taluka Chanasma, District Patan. The said lands were required for public purpose, namely for constructing Narmada Canal. Therefore, Notification under Section 4(1) of the Act was issued on 30th December, 1995 and declaration under Section 6 of the Act was published on 2nd August, 1996. According to them, the rate of compensation determined by respondent no. 2 at Rs.4.50 paise per Sq.mtr., for irrigated lands was grossly inadequate, but because of their poor financial conditions, they could not prefer Reference for enhancement of compensation. However, other similarly situated persons whose lands were acquired in the very proceedings approached the Reference Court by submitting application under Section 18 of the Act to the Collector and their Reference Cases were numbered as 807 of 2002 to 824 of 2002 and they were heard and disposed of by 3rd Fast Track Court, Patan. On 19th May, 2005, the Reference Court made the award and

enhanced the rate of compensation by granting additional amount of Rs.45/- per Sq.mtr., The petitioners learnt about the award passed by the Reference Court. Hence, on 30th July, 2005, they applied for the certified copy of the award. On 17th August, 2005, certified copies were ready for delivery and they were delivered to the petitioners. Before that, on 16th August, 2005, the petitioners submitted applications under Section 28A of the Act before respondent no. 2, which as already stated above was rejected, on the ground that the certified copy was not produced. The said order is now challenged before us in these petitions.

3. It is submitted by Mr. Amit Nanavaty learned advocate for the petitioners that the order passed by respondent no. 2 is erroneous *inasmuch* as there is no need to supply or produce certified copy of the award of the Reference Court before respondent no. 2 along with application under Section 28A of the Act. According to him, it is settled proposition of law that the applicant of application under Section 28A of the Act is not required to submit certified copy of the award unless it is so demanded by the concerned officer. He has placed reliance on the decision rendered by us in Special Civil Application No.23810 of 2005 dated 16th December, 2005. He has also drawn our attention to the said decision, copy whereof is annexed as annexure-E. In the said decision, we have placed reliance on the earlier decision rendered by the Division Bench of this Court in the case of **Chitubhai Naranbhai Patel v. Special Land Acquisition Officer reported in 2005 (1) G.L.H., pg.88** and we have also quoted relevant portion of the said judgment, which is reproduced hereunder.

> "Production of certified copy of the award along with application as provided under Order 41 R.1 of Civil Procedure Code (i.e. Copy of decree) is not made compulsory either in the Act or in the

> Rules made thereunder. Therefore, merely because certified copy of the order was not produced along with the application, such application cannot be rejected if the application is filed within three months from the date of the award. However, the petitioner who is producing certified copy is entitled to get the time for getting certified copy is excluded. There may be cases where parties may not be aware of the exact nature of the award of the court and they have to apply and get a certified copy. In order to provide for such situation proviso is included. The proviso of the Act gives no direction that application under Section 28A should always be accompanied with the certified copy."

4. Thus, as per the decision of the Division Bench, production of the certified copy along with application under Section 28A of the Act is not required. Mr Nanavaty has also annexed to the petition judgments rendered by the Division Bench which are on the same line. In view of the same, it is obvious that the impugned order passed by respondent no.2 is against the proposition of law laid down by this court. Hence, this order has to be quashed and set aside. Accordingly, the impugned order is quashed and set aside. The matters are remanded to respondent no.2 for his consideration on merits. It would be open to respondent no.2 to examine all the issues involved in the application including the one of limitation. He shall render the decision within three months from the date of receipt of the writ of this petition.

Rule is made absolute to the aforesaid extent. Direct Service is permitted.

[Kshitij R. Vyas, J.]

[Akshay H. Mehta, J.]

/phalguni/